

## REMARKS

Claims 1 - 8 remain active in this application. The specification has been reviewed and editorial revisions made where seen to be appropriate. Claims 1 and 3 - 8 have been amended to improve form. New claim 9 is presented based on claim 4 as originally filed. New claim 10 is presented to more fully recite the subject matter regarded as the invention. While the amendments are not believed to be substantive, support for the amendments of the claims, including new claims, is found throughout the application. No new matter has been introduced into the application. The acceptance of the drawings and the acknowledgment of the claim for priority and receipt of supporting certified copy are noted with appreciation.

It is noted for the record that paragraph 2 of the present office action refers to claims 1 - 7 as pending in the application. In fact, original claims 1 - 8 are pending and action has been taken on claims 1 - 8.

The Examiner has objected to claim 4; noting that antecedent language reference appears to indicate that dependency should be from claim 2. This objection is respectfully traversed as being moot in view of the above amendment in which dependency of claim 4 has been revised as suggested by the Examiner. In this regard, new claim 9 is based on claim 4 but has been revised to properly depend from claim 1. Accordingly, reconsideration and withdrawal of this objection is respectfully requested.

Claims 1 - 8 have been rejected under 35 U.S.C. §103 as being unpatentable over Maissel et al. in view of Bryant et al. This ground of rejection is respectfully traversed.

While Maissel et al. appears to teach collection of program characteristics over a period of time regarding the various characteristics of programs

viewed by a viewer (column 12, lines 16 - 34, as noted by the Examiner) and provides customization of presentation of the EPG such as alert 105, discussed at column 10, lines 12 - 21, or highlighting as shown in Figure 9B, which may be based on such information, the Examiner admits that Maissel et al. "fails to specifically disclose the controller identifying types of multiplexed elementary streams and selecting an elementary stream corresponding to the specified type, as claimed." It is also evident that Maissel et al. suggests substantial user and/or system control over any user profile which may be developed, including resetting of the collected user profile and user specification of the profile substantially independent of collection of selection data (column 12, lines 35 - 61). However, while Maissel et al. may suggest a wide variety of possibly desirable features of EPG presentation, Maissel et al. contains very little disclosure of how various data must be manipulated in order to do so, as the Examiner evidently recognizes.

The Examiner relies on Bryant et al. to supply a teaching of identifying and selecting types of elementary streams and correctly notes that Bryant does so "for the benefit of providing *precise* broadcasting of composite programs to target audiences" (emphasis added) However, such a function would be entirely defeated by accommodation of user preferences as in Maissel et al. (and vice-versa) and, indeed no teaching of any user control or collection of user preference data based on user selection of program types is seen. On the contrary, while selection is performed in the set-top-box (STB) to allow targeting of individual viewers, the selection is controlled by the broadcast/cable system operator to insert selected fill material (column 5, lines 34 - 39). In this regard, the customer profile of Bryant et al. is explicitly disclosed to be "demographic" data and not collected

preference data (column 4, lines 1 - 9) and that selected "fill material" is "especially designed to appeal to the various target audiences based on their diverse demographics" (column 4, lines 10 - 19). See also column 2, lines 33 - 36, and preferred methods of implementing the invention of Bryant et al. in columns 7 and 8; none of which teach or suggest anything other than system operator control to the exclusion of the user or collected user preference/selection information. Note also that some selection may also be done at the street box level or other levels of the distribution network even further removed from being responsive to user preferences.

Therefore, while Bryant et al. may teach selection between elemental streams of fill material, it does not teach doing so in response to collected user selection data forming a user profile or in connection with types of programs in respective elemental streams but, rather, teaches selection of fill material data streams based only on stream type in a STB and teaches away from accommodating user preferences in any way. Therefore, modification of Maissel et al. in accordance with Bryant et al. or vice-versa would prevent either the systems of Maissel et al. or Bryant et al. from operating in the intended manner or to produce the intended function. Therefore, the proposed combination of teachings is clearly improper under *In re Gordon*, 221 USPQ 1125 (Fed. Circ., 1984). Certainly, neither of the applied references provides evidence of a level of ordinary skill in the art which would support the conclusion of obviousness which the Examiner has asserted since the references whether considered alone or (improperly) in combination, leads to an expectation of success in providing an adaptive arrangement for presentation of EPG information through selection of types of elemental streams based on accumulated user selections of types of programs, much less enabling the

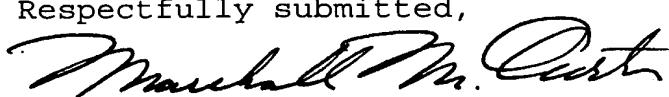
realization of such a meritorious function in the manner claimed.

Accordingly, it is respectfully submitted that the rejection based on Maissel et al. and Bryant et al. is clearly improper and in error and the Examiner has failed to make a *prima facie* demonstration of obviousness of any claim in the application. Therefore, reconsideration and withdrawal of this rejection of claims 1 - 8 is respectfully requested.

Since all rejections, objections and requirements contained in the outstanding official action have been fully answered and shown to be in error and/or inapplicable to the present claims, it is respectfully submitted that reconsideration is now in order under the provisions of 37 C.F.R. §1.111(b) and such reconsideration is respectfully requested. Upon reconsideration, it is also respectfully submitted that this application is in condition for allowance and such action is therefore respectfully requested.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,



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In the Drawings:

Please approve the proposed drawing revisions as shown in red in the attached copies of Figures 1 and 6. Replacement sheets containing these Figures are concurrently filed herewith.

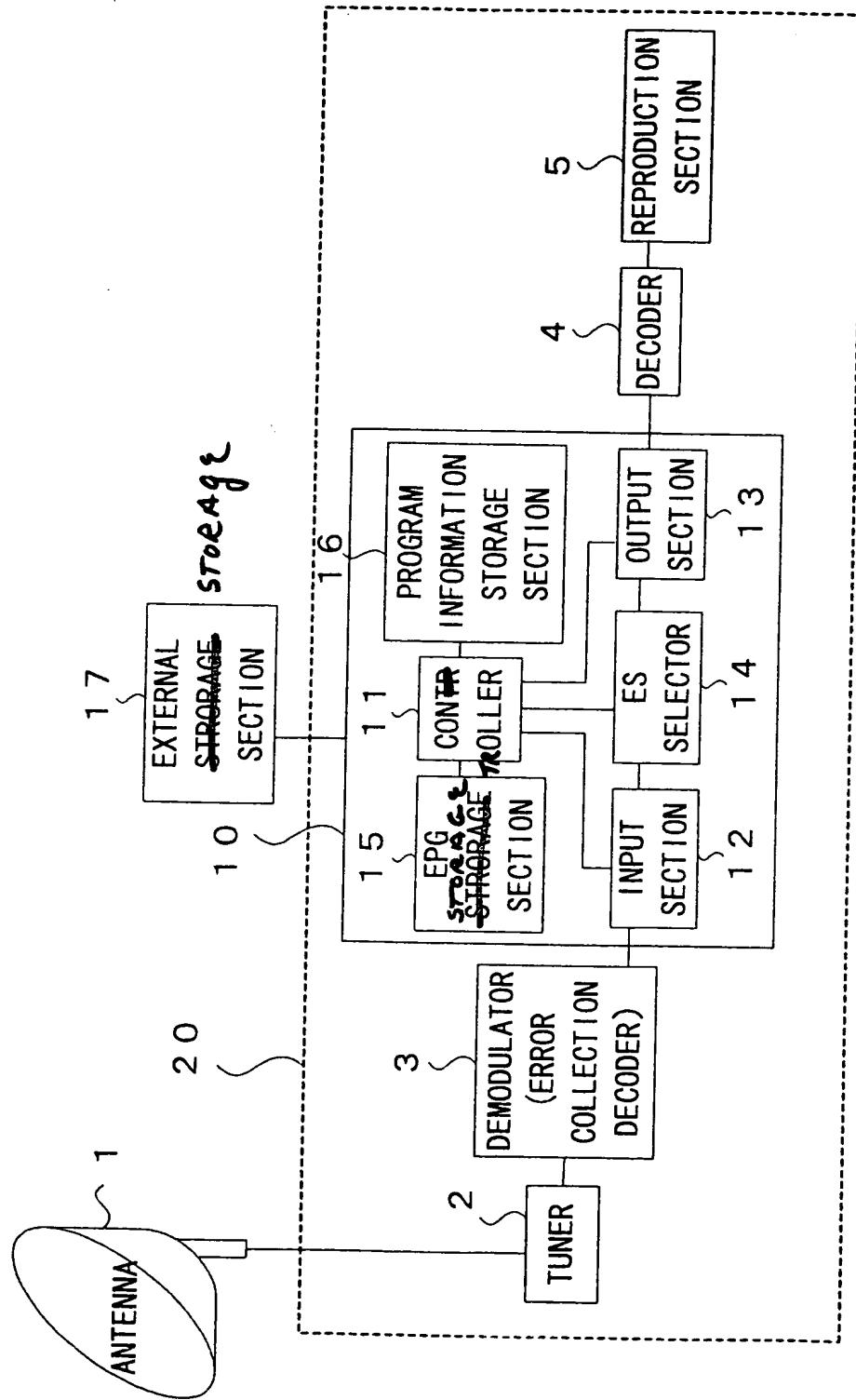


FIG.1

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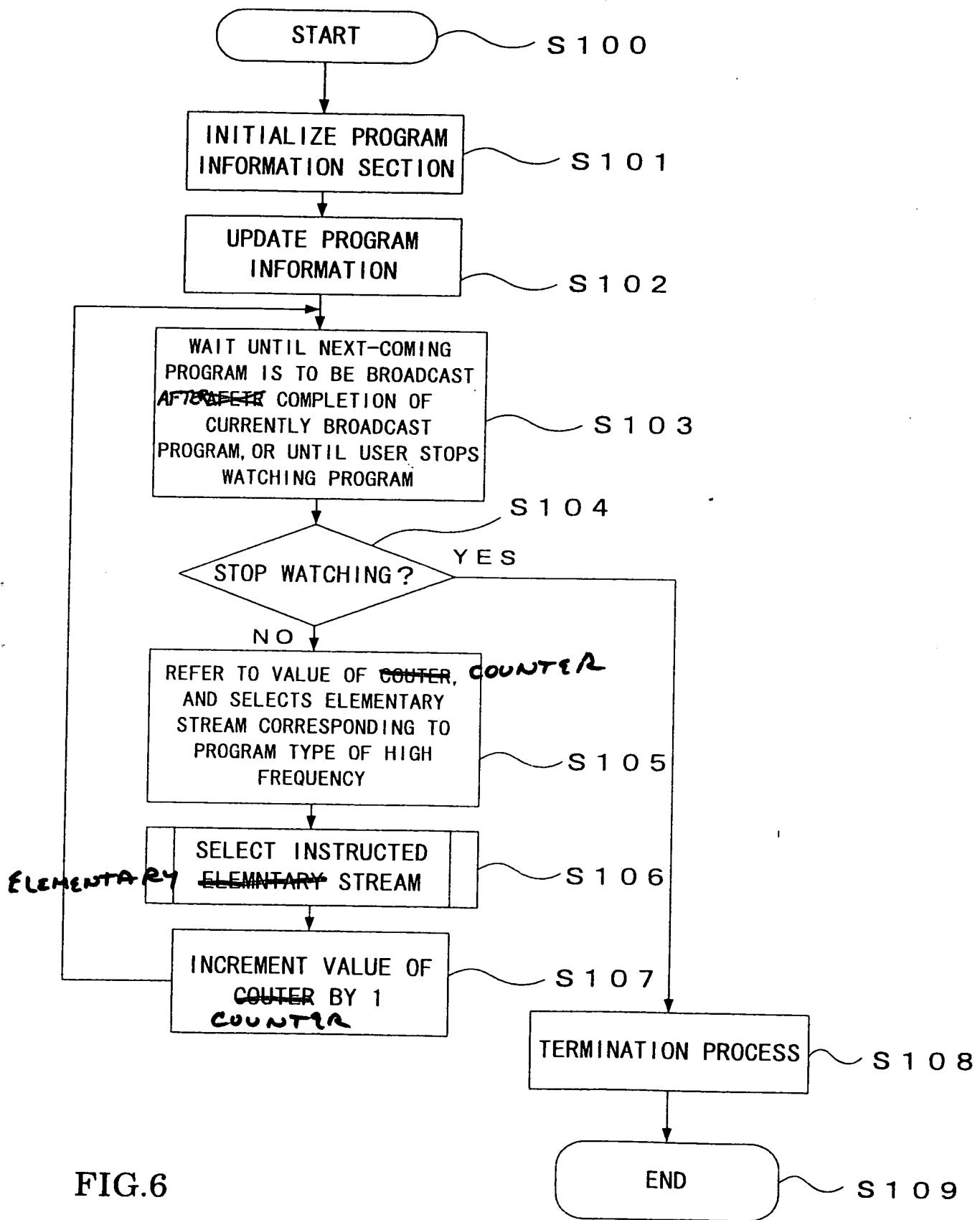


FIG.6